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In re Application of :
COLLOCA et al. :
Application No.: 10/587,389 : DECISION
PCT No.: PCT/EP2005/000558 :
Int. Filing Date: 18 January 2005 :
Priority Date: 23 January 2004 :
Attorney's Docket No.: ITR0048YP :
For: CHIMPANZEE ADENOVIRUS :
VACCINE CARRIERS :

This decision is in response to applicants' petition under 37 CFR 1.10(c) filed 02 February 2009.

BACKGROUND

On 18 January 2005, applicants filed international application PCT/EP2005/000558, which designated the United States and claimed a priority date of 23 January 2004. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 04 August 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 24 July 2006 (23 July 2006 being a Sunday).

A transmittal letter was filed by applicants for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and a declaration of inventors. These papers were date-stamped 25 July 2006 by the USPTO.

On 10 July 2008, a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) was mailed indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 15 September 2008, applicants filed a response to the NOTIFICATION OF MISSING REQUIREMENTS which included a declaration of inventors. The indication in the declaration that joint inventor Elisabetta Sporeno is deceased has been treated as a request for status under 37 CFR 1.42.

On 31 December 2008, a Notification was mailed indicating that the above-identified application was abandoned as of midnight 24 July 2006 for failure to pay the full U.S. basic national fee by thirty months from the priority date (USPTO records show the payment as having been received 25 July 2006, one day late.) and that the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 10 July 2008 was VACATED.

On 02 February 2009, applicant submitted the instant petition under 37 CFR 1.10(c). The petition was accompanied by, *inter alia*, a copy of a postcard receipt date-stamped 25 July 2006 by the USPTO and a copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label #EV321988999US. The handwritten date in the "Date Accepted" box is "72406".

DISCUSSION

Petition Under 37 CFR 1.10

The evidence of record is sufficient to establish with reasonable certainty that the application papers and basic national fee were deposited with the United States Postal Service as an "Express Mail Post Office to Addressee" mailing on 24 July 2006. Specifically, the "Express Mail" label number ("EV321988999US") appears on the Transmittal Letter, which also lists the above-identified attorney docket number, title and inventors. As discussed above, the "Date Accepted" entry in the copy of the Customer Copy of the "Express Mail" label is 24 July 2006.

Request for Status Under 37 CFR 1.42

The submission filed 15 September 2008 has been reviewed and has been found in compliance with 37 CFR 1.42. The declaration filed 15 September 2008 is in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, applicant's petition under 37 CFR 1.10(c) requesting that the application papers and the basic national fee be accorded a receipt date of 24 July 2006 is **GRANTED**.

For the above reasons, the request for status under 37 CFR 1.42 is **ACCEPTED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

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Legal Examiner

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